

\*E-Filed 4/6/11\*

United States District Court  
For the Northern District of California

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

CHRISTOPHER P. DUENAS,

No. C 10-5884 RS

Plaintiff,

v.

**ORDER GRANTING MOTION FOR  
LEAVE TO SUPPLEMENT AND  
AMEND COMPLAINT**

EDMUND G. BROWN, et al.,

Defendants.

Defendants Towrey, Brown and Harris moved to dismiss plaintiff Duenas' complaint. Brown and Harris filed joint motions and Towrey filed a separate motion. In conjunction with his brief in opposition, Duenas sought leave to supplement and amend his complaint, pursuant to Federal Rule of Civil Procedure 15(a) and (d). The amended complaint includes the same claims for relief as the original complaint, but contains new facts and an additional plaintiff. All defendants opposed Duenas' request to amend and supplement. Along with his reply brief to his motion to amend and supplement, Duenas attached a second, proposed Amended Complaint.

As Rule 15(a)(2) instructs, "[t]he court should freely give leave when justice so requires." Absent any apparent or declared reason—such as undue delay, bad faith or dilatory motive, repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the opposing party by virtue of allowance of the amendment, futility of amendment, etc.—the "leave sought

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1 should, as the rules require, be ‘freely given.’” *Foman v. Davis*, 371 U.S. 178, 182 (1962). Rule 15  
2 thus embraces the principle that “the purpose of pleading is to facilitate a proper decision on the  
3 merits.” *Id.* at 181-82 (*quoting Conley v. Gibson*, 355 U.S. 41, 48 (1957)). In short, the policy  
4 permitting amendment is to be applied with “extreme liberality.” *Eminence Capital, L.L.C. v.*  
5 *Aspeon, Inc.*, 316 F.3d 1048, 1051 (9th Cir. 2003) (citation omitted).

6 In their opposition briefs to Duenas’ request to amend, defendants separately argued  
7 amendment would be futile in light of Duenas’ purported failure to resolve issues—standing being  
8 the most prominent—highlighted in the two motions to dismiss. In those briefs, both defendant sets  
9 also submitted argument as to why even the proposed First Amended Complaint should be  
10 dismissed. As of the date of this Order, the defendants have not yet filed an objection to Duenas’  
11 proposed Second Amended Complaint (“SAC”). Without opining as to whether or not the SAC  
12 (filed April 1, 2011) addresses all of the purported defects identified in defendants’ motions, it does  
13 contain additional and different material. In the interest of a coherent record, defendants should  
14 channel the various arguments advanced in their current motions and opposition briefs into a new  
15 motion to dismiss Duenas’ SAC (defendants may, of course, again file two motions). In light of the  
16 liberal policy regarding amendment, Duenas’ request to supplement and amend his complaint shall  
17 be granted, and the SAC filed April 1, 2011 is deemed filed. Accordingly, the motions to dismiss  
18 are denied, without prejudice to defendants’ right to reassert any arguments contained therein to the  
19 extent they may be equally applicable to the amended complaint. The hearing on defendants’  
20 motions to dismiss and plaintiff’s motion to amend and supplement is therefore vacated.

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23 IT IS SO ORDERED.

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25 Dated: 4/6/11

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RICHARD SEEBORG  
UNITED STATES DISTRICT JUDGE

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